IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.

S. B. CIVIL MISC. APPEAL NO. 1299/2000

NIRANJAN LAL
v
VINOD KUMAR & ANOTHER

Date of Judgment: 26th FEBRUARY , 2007.

Hon'ble Mr. Justice R. S. Chauhan

Mr. B.L. Mandhana for the appellant.
Mr. R.K. Agrawal for the respondents.

REPORTABLE
By Court:

The appellant-plaintiff, who happens to be landlord, is challenging the order dated 12.7.2000 passed by the Addl. District Judge No. 1, Sikar, whereby the learned Judge has set aside the judgment dated 30.3.96 passed by the Civil Judge (Jr. Div.), Sikar and has remanded the case back to the learned trial court for recording evidence on issue No. 7 and for deciding the suit afresh.

The brief facts of the case are that the appellant had filed a suit for eviction against the defendant-respondent on the ground of bonafide necessity and on the ground of default in payment of rent. The suit premises consists of a 'Nohra' which the appellant had rented out to the respondent at a rental value of Rs. 50/- per month. The defendants filed the written statement and admitted the tenancy but denied the grounds of eviction. On the basis of the pleadings,

the learned trial court framed seven issues. The seventh issue was about the relief that can be granted to the appellant by the Court. After a detailed discussion of the evidence the learned trial court concluded that indeed, the defendants-respondents had defaulted in payment of rent. However, it equally held that the ground of bonafide necessity was not proved by the appellant during the course of trial. Since the respondents were held to be defaulters, they were directed to vacate the premises. Therefore, a decree for eviction was passed in favour of the appellants vide judgment dated 30.3.96.

As the respondents were aggrieved by the said judgment, they filed appeal before the Addl. District Judge No.1, Sikar. Vide judgment dated 12.7.2000, while confirming the findings on issues No. 1 to 6 and 8, the learned Judge has remanded the case with the direction that the learned trial court shall decide the issue No. 7 after recording the evidence. Hence this appeal before this Court.

Mr. B.L. Mandhana, learned counsel for the appellant, has strenuously contended that the power to remand a case is specified by Section 107 of the Civil Procedure Code (henceforth to be referred to as 'the Code', for short) . The power is further elaborated under Order 41, Rule 23 to 26-A of the Code. But, once the learned Judge had concluded that the finding of the learned trial

court are legally valid, there was no reason for him to remand the case back for the relief to be given to the appellant. Moreover, under Order 41, Rule 24 of the Code in case sufficient evidence exists on record, then the appellate Court can mould the relief according to the circumstances of the case. Therefore, the learned Judge has failed to exercise the power vested in him under Order 41, Rule 24 of the Code.

On the other hand, Mr. R.K. Agrawal, learned counsel for the respondents, has supported the impugned judgment.

We have heard both the learned counsels and have perused the impugned judgment.

The scope and ambit of Section 107 of the Code and of Order 41, Rule 23 to 29-A have been discussed elaborately by this Court in the case of Niranjan Lal Vs. U.I.T., Alwar (AIR 2007 (Raj.) 18). In the said case the Court held as under :-

> **A conjoint reading of these provisions would clearly reveal that under Section 107 (2) of the Code, the appellate court has the same power as the court of original jurisdiction. Moreover, according to Section 107 (1) of the Code, the appellate court has the power to frame the issues, to take additional evidence and to determine the suit.**
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> **Order 41, Rules 23 to 29 of the Code merely elaborate the power prescribed by Section 107 of the Code. Order 41, Rule 23 of the Code deals with a case where the trial**

Court has disposed of a suit upon a preliminary point and the decree is reversed in appeal. The appellate court may, if it thinks fit, by order remand the case, and may further direct the issues, which shall be tried in the case so remanded. The appellate court may further direct the trial court to readmit the suit under its original number in the register of civil suits. It may also direct the trial court to determine the suit and also declare that the evidence, if any, recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Order 41 Rule 23-A of the Code grants the same power as under Order 41 Rule 23 of the Code, when the case is finally disposed of and the decree is reversed in appeal and a retrial is considered necessary. Considering the fact that the power under Order 41 Rules 23 and 23-A of the Code is vast in nature, the power should be exercised sparingly and in the rarest of the rare case. For, a denovo trial especially under Order 41 Rule 23-A of the Code would imply the trial to commence all over again from the initial stage. Since the civil trials are time consuming, since a denovo trial would again take the parties through the rigors of a civil trial, therefore, such a power should be resorted to in the rarest of the rare case.

Once, the case has come up to the appellate stage, according to Rule 24 of the Code, if the evidence upon the record is sufficient to enable the appellate court to pronounce judgment, the appellate court may, after resettling the issues, if necessary, finally determine the suit. Hence, under Rule 24 of the Code, there is no necessity for the Court to remand the case back to the trial court. It can exercise the power, take additional evidence under Rule 27 of the Code for the resettled issues and decide the case finally itself.

According to Rule 25 of the Code, the appellate court may frame certain issues and refer them for trial to the trial court, in case the trial court has omitted to frame or try any issue or to determine any question of fact, which appears to the appellate court to be essential for just decision of the suit. The appellate court shall direct the trial court to take additional evidence as required and to return the evidence so recorded back to the trial court

within the time frame fixed by the appellate court. Upon receiving such evidence under Rule 26(2) of the Code, the appellate court shall proceed to determine the appeal.

A bare perusal of Rules 24 and 25 of the Code clearly reveals that the appellate court should endeavour to decide the case at the appellate stage itself. However, in rare cases for just decision of the case, it may remand the case back to the trial court for recording of evidence on particular issue framed by it. But such recording should be done within the time frame fixed by the appellate court. Moreover, the evidence so recorded should be sent back to the appellate court for the final decision of the appeal.

The purpose behind the Rules is not to initiate de novo trial. The purpose is also not to prolong the dispute between the parties. Since the Judiciary must endeavour to decide the dispute as soon as possible, the appellate court is expected to decide the case at the appellate stage itself. Therefore, the tendency to remand the case in toto after setting aside the judgment of the trial court and the tendency to direct a denovo trial is against the tenor of law. The appellate court is expected to exercise its power within the confines to Rules 23 to 26-A of the Code. Ample powers have been given to the appellate court under Rules, 27, 28 and 29 of the Code to take additional evidence and to decide the issues reframed by it. Since the Trial Courts are the most overburdened Courts in the judicial hierarchy, the appellate court should refrain from remanding the case in toto in a routine manner. What can be done at the appellate stage, need not be remanded back to the trial courts. After all, the buck has to stop somewhere.

The poor litigant cannot be treated as a shuttlecock and forced to run from pillar to post, from court to court. The litigant expects the judiciary to decide its case at the earliest. The litigant neither has the financial means, nor the energy to go on a roller-coaster ride of litigations. The judiciary has to be sensitive to the financial condition and to the expectation of the litigant. To prolong a dispute endlessly is not only a disservice to the litigant, but it is an injustice to him. Therefore, this trend of remanding the

case back to the trial court in a mechanical and routine manner has to stop. The learned District Judges, who are experienced and knowledgeable, are expected to do their duty by the litigant.

In the case of Bechan Pandy and Others v Dulhin Janki Devi and Others, (AIR 1976 SC 866), the Hon'ble Supreme Court had held as under:

To remand a suit to the trial court would necessarily have the effect of keeping alive the strife between the parties and prolonging this long drawn litigation by another round of legal battle in the trial court and thereafter in appeal. It is time, that the final curtain is drawn and the long meandering course of litigation between the parties is put an end to. The Courts should be loath to entertain a plea, which would have the effect of condemning succeeding generation of families to spend major part of their lives in the protracted litigation.

In the present case since the learned Judge has confirmed the findings of the learned trial court on all the issues except issue No. 7, it clearly shows that sufficient evidence existed for the appellate court to determine the case finally. Therefore, the learned Judge had ample power under Order 41, Rule 24 to finally determine the case. Hence there was no occasion for the learned Judge to remand the case to the trial court. The appellate courts are expected to exercise the powers given to them by the law. They cannot abdicate the power. By remanding the case back to the trial court, unnecessarily litigation is kept alive, when it could have been decided finally. Unnecessarily, by such an act of the Court, the litigant is forced to run from pillar to post. In the present case, the

landlord is waiting since 1987 to get his premises vacated from the tenant. Twenty years have elapsed and yet the poor litigant is hopelessly hoping that the curtain will be drawn on the litigation and he will be permitted to reclaim the 'Nohra' that he had rented out to the respondents.

In the result this appeal is allowed. The judgment dated 12.7.2000 is quashed and set aside. The learned Judge is directed to call for the filed and to finally determine the case while using his power under Order 41, Rule 24 of the Code. Since the case has been hanging fire for the last twenty years, the learned Judge is expected to exercise his power within six months of receipt of the record from the trial Court. The parties are directed to appear before the learned appellate Court on 22.3.07. There shall be no order as to costs.

(R.S. CHAUHAN) J.

mrg.